Supreme Court, U. S.
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IN THE

SUPREME COURT

OF THE UNITED STATES

No. 77-1631

Reston Homeowners Association, Plaintiff

vs

James L. & Janie E. Ridgill, Defendants-Appellants

JURISDICTIONAL STATEMENT IN SUPPORT OF NOTICE OF APPEAL TO THE SUPREME COURT OF VIRGINIA

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

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IN THE
SUPREME COURT
OF THE UNITED STATES

Term, 1978

Reston Homeowners Association, Plaintiff
v
James L. & Janie E. Ridgill, Defendants-Appellants

Jurisdictional Statement in Support of Notice of Appeal to the Supreme Court of Virginia

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INTRODUCTION

Appellants pray that an appeal be granted from the denial of an appeal petition entered by the Supreme Court of Virginia on September 29, 1977 in its Record No. 77-0371 thereby affirming a judgment of the Fairfax Circuit Court in its case at Law No. 34,141, and from a denial of a rehearing on the petition denial entered by the Supreme Court of Virginia in its Record No. 77-0371 entered on November 23, 1977.

Notice of appeal under Rule 10 of the Supreme Court of the United States was ~~sent by first class mail postage prepaid on February 20, 1978.~~ FILED FEB 21, 1978

The decision of the Supreme Court of Virginia in effect, alleged no reversible error and affirmed the Constitutionality under Article 1, Section 10 of the Constitution of the United States, of Virginia State action, and of Reston Homeowners Association corporate action, in variation of the terms of the

covenants of record in the deed to appellant's lot, and the deed of dedication of Reston, Sections Two and Four, and affirmed in effect, the Constitutionality of the Seventh Amendment of the Federal Constitution, and the Constitutionality of substituting agents (by the tribunals of Virginia) named in the said deeds without the consent of the appellants or others situated like them.

Appellants submit this jurisdictional statement to show that the Supreme Court of the United States has jurisdiction of the appeal, or to grant a Writ of Certiorari, and that a substantial question is presented.

OPINIONS BELOW

The final judgment of the Fairfax Circuit Court was entered on November 22, 1976, and its opinion is printed herein on page i of the appendix. The denial of the Supreme Court of Virginia of an appeal or writ of error on apetition from appellants was entered on September 29, 1977 which is printed herein as page ii of the appendix, and a denial of rehearing was entered by the Supreme Court of Virginia on November 23, 1977, printed herein as page iii of the appendix.

JURISDICTION

The denial of a writ of error by the Supreme Court of Virginia was unsigned except for the signature of the then Deputy Clerk, Mr. Lucy, and was entered under date of September 29, 1977, and a petition for rehearing was denied in a similarly signed order dated November 23, 1977. A Notice of

Appeal under Rule 10 of the Rules of the United States Supreme Court was sent by first class mail postage prepaid on February 20, 1978.

Jurisdiction of this Court is invoked under Title 28, United States Code, para. 1257(2) and 2103 and 2104 and Parts IV and V of the Rules of This Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions are:

CONSTITUTION OF THE UNITED STATES

First Amendment
Fifth Amendment
Seventh Amendment
Fourteenth Amendment
Article 1, Section 10

CONSTITUTION OF VIRGINIA

Article VI, para. 1

CODE OF VIRGINIA

Title 8-241 (now Title 8.01-672)
Title 13.1-35
Title 13.1-45
Title 13.1, Chapter 2
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Title 16.1-92
Title 16.1-93
Title 16.1-106

QUESTIONS PRESENTED

The Constitutional questions presented by this appeal, or petition for writ of certiorari, were presented in the Fairfax County General District Court as to the primary ones concerning Article 1, Section 10, the Seventh Amendment, and procedural and substantive due process under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States, and in turn to the Fairfax Circuit Court and to the Supreme Court of Virginia. These issues were argued both in the original petition and the petition for rehearing submitted to the Supreme Court of Virginia. Other issues concerning the operation of the Virginia Supreme Court, and the originally presented Constitutional issues were presented at the earliest possible instance and are:

1. Does the substitution and enforcement of a change of agents recited in deeds (the deed to appellants lot and the deed of dedication of Reston, Sections Two and Four) by operation of the charter of consolidation of Reston Homeowners Association issued by the Virginia State Corporation Commission as more fully explained in U.S. Supreme Court Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813 (1972) by the tribunals of Virginia in this action amount to an unconstitutional variation of said deeds under Article 1, Section 10 of the Constitution of the United States?

2. Does the inclusion against appellants consent of a portion of the $60 annual assessment enforced herein to pay for building new facilities when the charter of Reston Homeowners Association -- whether consolidated or constituent -- calls for "operation and maintenance" amount to an unconstitutional variation of the contract at issue herein under Article 1, Section 10 of the U.S. Constitution?

3. Have the tribunals of Virginia failed to accord the appellants their Constitutional rights to a proper forum in which to be heard in denial of Constitutional rights under the First, Fifth, Seventh and Fourteenth Amendments of the Constitution of the United States?

STATEMENT OF FACTS

The statement of facts as set forth in U.S. Supreme Court Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1709, 31 L. Ed. 813 (1972) is incorporated herewith by reference.

This is an assessment enforcement proceeding under the terms of the deed to appellants lot in Reston, Virginia, and is the logical extension of the prior case as detailed above. In the prior case the State Corporation Commission took the position that it has no jurisdiction to determine the issues presented in said case which included the issue of whether a charter for a corporation issued by the State Corporation Commission such as that of Reston Homeowners Association -- whether consolidated or constituent -- passes constitutional muster when the charter is issued subject to a deed of dedication such as the Deed of Dedication of Reston, Sections Two and Four, without having the Deed of Dedication before the Commission and in the record of the charter as part of the charter papers. In Reynolds v. Alexandria Motor Bus Lines, 141 Va

213, 126 SE 201 (1925) the Supreme Court of Virginia held that the Virginia State Corporation Commission lacks the authority to grant a charter to a corporation except in a manner prescribed by law, which includes the Constitution of the United States.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

There is no longer doubt of the Supreme Court of the United States having appeal jurisdiction under Title 28 USC 1257(2) when the validity of state action has been sustained as being Constitutional, especially under circumstances as in the present situation the invalidity of State action has been injected as an issue at the earliest possible time even though the State action on its face bears no federal impediment, Dahnke-Walker Milling Co. v. Bondurant, 257 US 282; Bantam Book Co., Inc. v. Sullivan, 372 US 58, 61, n. 3 (1962). And even when a cause cannot be taken to the highest court of a state except by leave of the court itself, a refusal of the court upon proper application made to grant the leave is equivalent to a judgment of affirmance, as in the present case, and is such final judgment as may be made the basis of proceedings under the appellate jurisdiction of the Supreme Court of the United States, Gregory v. McVeigh, 90 US (23 Wall) 294, 23 L. Ed. 156 (1874). And even where the Supreme Court of Virginia has failed to enunciate its jurisdiction and found the U.S. Constitutional issues without merit, appeal may be taken to the Supreme Court of the United States, Western Union Telegraph Co. v. Hughes, 203 US 505, 27 S. Ct. 162, 51 L. Ed. 294 (1906), Sullivan et al v. Little Hunting Park et al., 396 US 229, 24

L. Ed. 386, 90 S. Ct. 400 (1969).

At first impression this case appears concerned with contractual matters within the cognizance of the tribunals of Virginia. However, as will become apparent the central issues in this case are denial of appellants rights guaranteed by the Federal Constitution of the United States. A review of the record herein reveals that appellants have not been provided with the essential guaranties of the Constitution because:

1. The tribunals of Virginia have failed at every stage of the proceedings to abide by the laws of Virginia.

2. The State of Virginia, its officers and agents, have failed to provide appellants and those situated like them with a proper forum in which to be heard.

3. The decisions of the tribunals of Virginia fail to advise appellant of the reasoning of such tribunals in such a manner that the errors in their respective decisions could be ascertained to formulate an appeal and raise proper Constitutional issues.

4. The Supreme Court of Virginia failed to provide appellants with the bare essentials of a hearing required by the First, Fifth, and Fourteenth Amendments of the Constitution of the United States by its failure to abide by its own rules, granting an oral hearing before the requisited number of judges for considering Federal Constitutional issues, and providing a written decision as appears required by law. This Court can remand for a more considered

opinion, Wisconsin v. Constantineau, 400 US 433, 438 (1970).

Under the Constitution of Virginia effective at noon July 1, 1971, and Article VI, para. 1 thereof, the Judicial Power of the Commonwealth shall be vested in a Supreme Court and in such other courts or original or appellate jurisdiction subordinate to the Supreme Court -------".

And "the Supreme Court shall by virtue of this Constitution, have appellate jurisdiction in cases involving Constitutionality of a law under this Constitution or the Constitution of the United States-----". Under paragraph 4 of the Article VI of the Virginia Constitution it has been stated that the Supreme Court of Virginia shall consist of seven justices. Pursuant to this portion of a previous Virginia Constitution it has been held that no law shall be declared unconstitutional under the Constitution of the United States except on concurrence of at least a majority of all justices of the Supreme Court. It appears then that appellants were entitled to a hearing before the full court of seven justices including an oral hearing, and were merely accorded a very brief hearing on the jurisdictional issue before three justices, none of which signed the order of the Court. These three justices proceeded to decide the case on the merits holding that there was no reversible error in effect without noting jurisdiction in the original decision on the hearing, and after notice on a petition for rehearing again failed to state the basis of their jurisdiction in denial of appellants request therefor. It is the position of appellants that when any state

action takes place in contravention of their rights they have the legal right to challenge the authority of the agents of the state and to demand that such agents set forth the basis of their authority to act in the matter and that this demand of a judicial agent of the state cannot be treated in the cavalier fashion in which the Supreme Court of Virginia acted in this case without contravening appellants rights under the Constitution of the United States. It follows then that appellants have not been accorded due process of law guaranteed them by the Constitution of the United States, Funkhouser v. Spahn, 102 Va 306, 46 SE 378 (1904). This is error of substance and is reversible error appellants contend.

On the substantive issues presented herein, the error is substantial. The construction of a writing such as the contract involved in this case (which includes the deed to appellants lot, the deed of dedication of Reston, Sections Two and Four, and the charter of Reston Homeowners Association -- whether consolidated or constituent) is a question of law for the court, Carlisle v. Hassan, 199 Va 771, 102 SE 2d 273 (1958).

In the case at issue herein, the provisions of the contract have been erroneously decided by the trial court and by the Supreme Court of Virginia on appeal. Denial of Constitutional right is reversible error, Pine v. Comm., 121 Va 812, 93 SE 652 (1917).

In Carondelet Canal Co. v. Louisiana, 233 US 362, 364 (1913) this Court stated:

"The judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State, or under its direction, for public use, without compensation, is upon principle and authority wanting in due process of

law required by the Fourteenth Amendment. The same principle applies to a statute of a State. Chi., B. & Q. RR v. Chicago, 166 US 226; Fayerweather v. Rich, 195 US 276, and the Union Transit Co. v. Kentucky, 199 US 202."

"This court will determine for itself what the contract claimed to be violated was. Douglas v. Kentucky, 168 US 502; McGahey v. Virginia, 135 US 662; McCullough v. Virginia, 172 US 110; Vicksburg v. Waterworks Co., 202 US 467."

"This court will review the findings of fact by a state court where a conclusion of law as to a Federal right and the finding of fact are so intermingled as to make it necessary to analyze and dissect the facts for the purpose of passing on a Federal Question. Creswill v. Knights of Pythias, 225 US 261; Wood v. Cheseborough, 228 US 678. The necessary corollary of these propositions is that when the claim is that claimant has been deprived of property without due process of law, this Court will find for itself what the claimant's property rights were, and how he has been deprived of them."

It has been argued from the first instance possible that state action herein is repugnant to the Federal Constitution since the operative effect of the assailed state action has been the taking of property without notice and hearing or due process of law as guaranteed by the Federal Constitution, and especially Article 1, Section 10, and the First, Fifth, Seventh, and Fourteenth Amendments. The circumstances of each case determines jurisdiction of a court to give relief sought, Dodge v. Woolsey, 29 US 331, and the State of Virginia cannot enforce any part of a charter repugnant to the Constitution, Phillips Pet. v. Jenkins, 297 US 629, 634. Also,

the definition for jurisdictional purposes has been evinced to cover legislative action to which a state gives the force of law, Williams v. Bruffy, 96 US 176, 183, and covers orders of state commissions and governing bodies issued in the exercise of their delegated legislative authority, Williams v. Bruffy, supra, footnote 4, page 183.

Since the Virginia State Corporation Commission has the specific authority to issue a corporate charter, it has the authority to determine Federal Questions, especially in view of the fact that the issuance of the consolidation document which is being enforced by the Courts in this proceeding changes contractual agreements which are protected by Article 1, Section 10 of the U.S. Constitution. Also, the reserve power of a corporate charter must be determined in a consolidation document by the Commission and "these powers cannot be used to defeat the purpose for which the corporate powers were granted or to take property without compensation or arbitrarily to make alterations that are inconsistent with the scope an object of the charter or destroy or impair vested property interests." Phillips Pet. v. Jenkins, 297 US 629, 635, and this Court may determine for itself the factual issues concerning these issues, Carondelet Canal Co. v. Louisiana, supra.

Since a well reasoned decision is not available in this case, then the issues considered in the decisions must be postulated from the decisions and it must be assumed that the consolidation charter and the Virginia Code Sections under which the charter was issued have been upheld as being Constitutional because the charter is being enforced in this proceeding. It follows that this appeal is proper under 28 USC 1257 (2).

A. SUBSTITUTION OF AGENTS IS UNCONSTITUTIONAL

The deed recitals of Lot 204, Section 4, Reston, fifth paragraph, sets forth Reston Second Homeowners Association as appellants agent for enforcement of the covenants. An agent has a personal and fiduciary duty to the principal. And loyalty to that trust is the main feature of the selection, James v. Anderson, 149 Va 113, 140 SE 264 (1927). Substitution of another agent without consent of appellants is contrary to law as such substitution is unknown, American Color Type Co. v. Continental Co., 188 US 104, 107; 23 S. Ct. 265; 47 L. Ed. 404 (1902); Hofheimer v. Seaboard Citizens National Bank of Norfolk, 154 Va 392, 153 SE 656 (1930). This reasoning also applies to the Deed of Dedication of Reston, Sections Two and Four which specifically names Reston Second Homeowners Association as agent for enforcement of the covenants.

To permit this agency substitution to stand is to permit the State Corporation Commission at the request of the fiduciary directors of Reston Second Homeowners Association to do indirectly what they may not do directly, i.e., vary the terms of the deed to appellants lot and the Deed of Dedication of Reston, Sections Two and Four, and appears inconsistent with prior decisions of the Supreme Court of the United States such as that of Ridgill v. State Corporation Commission, as reported at Case No. 71-1135, 406 US 902, 92 S. Ct. 1609, 31 L. Ed 2d 813 (1972).

This agency substitution is in contravention of the Constitutional right of appellants under Article 1, Section 10 of the Constitution of the United States, and the First, Fifth, and Fourteenth Amendments as

well. This issue was argued in the trial courts, see particularly the Memorandum of Law in Support of the Motion of Summary Judgment on this issue as filed in the Fairfax Circuit Court (Appendix D hereof). This is reversible error.

B. THE CAPITAL IMPROVEMENTS IMPROPER VARIATION

Under Title 8-241 of the Code of Virginia (now Title 8.01-672) the appellants were entitled to raise and did raise an equitable defense in whole or in part to this $60 assessment.

It is the position of appellants that the contract at issue herein including the deed to their lot, the Deed of Dedication of Reston Homeowners Association whether consolidated or constituent, does not admit of any construction whereby under the terms of such contract the fiduciaries are entitled to assess the appellants for capital improvements such as a community center which is being built where none heretofore existed. If sub-agents Perce, Burgess and Kenny have been authorized to institute, compromise, and appeal this action or suit, then their admissions of the assessment being for such capital improvements is proof by appellants that this assessment is in whole or in part improper.

For example, the purposes clause of the corporate charter of Reston Homeowners Association -- whether consolidated or constituent -- reads as follows:

"(1) To operate and maintain such property as, pursuant to a Deed of Dedication -- filed August 27, 1964, in the land records of Fairfax County, Commonwealth of Virginia -- from

time to time may be designated or conveyed -- to be operated and maintained by the Corporation as parks, parking areas, open spaces, streets, paths, or as other facilities, to enforce the covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements, and liens provided in the Deed to be enforced by the Corporations, and to assess, collect and disburse the charges created under the Deed, all in the manner set forth in, and subject to the provisions of the Deed."

The appellants contend that this language of the purposes clause of the Reston Homeowners Association -- whether consolidated or constituent -- does not permit the said association to assess appellants against their consent for matters outside the terms thereof such as for capital improvements an example of which is to build a new community center where none heretofore existed. It is the position of appellants that "operation and maintenance" does not extend to creation of new facilities. Furthermore, it is the position of appellants that by the terms of the Deed of Dedication that any facility which is to be designated or conveyed for operation or maintenance will be so designated or conveyed at the time of the platting. The swimming pools south of Dulles Highway such as the Hunters Woods pool and the Glade Pool were apparently designated or conveyed for maintenance and operation after the platting and contrary to the terms of the contract.

Another portion of the allegedly stated purposes clause of the Reston Homeowners Association -- whether consolidated or constituent -- is:

"(2) To do any and all lawful things and acts that the corporation, from time to time,

in its discretion, may deem to be for the benefit of the property subject to the Deed and the owners and inhabitants thereof or advisable, proper, or convenient for the promotion of the peace, health, comfort, safety or general welfare of the owners and inhabitants thereof."

It is the position of appellants that to give any meaning to (2) supra as an object or part of the objects of the corporation would be to render such charter void for want of particularity since the charter is a contract which must be definite to have mutuality of consent and to pass Constitutional muster. Even though a contract on its face appears to have a meaning, yet if it is not possible to give it precise and definite application under the conditions intended for it to operate, it is void. A contract which has a standard of duty so vague, indefinite and uncertain that no sufficiently clear meaning can be attributed to it by men of ordinary intelligence and that they must necessarily guess at its meaning and differ as to its application transcends due process of law, Connolly v. Construction Co., 269 US 385m 46 S. Ct. 126, 70 L. Ed. 322; Yu Cong Eng v. Trinidad, 271 US 500, 46 S. Ct. 619; 70 L. Ed. 1059 (1926); Beatty v. Knowler, 29 US 151, 167 (1830).

A contract need not specify and particularize the exact norm but it must lay down a guide that has either a definite, fixed meaning at common law, or by established and recognized precedents, or a trade, technical, or definite, specific meaning, A. B. Small Co. v. American Sugar Refining Co., 267 US 233, 45 S. Ct. 295, 69 L. Ed. 589 (1925).

What then does the charter of Reston Homeowners Association -- whether consolidated or constituent -- require appellants to pay for?

Terminology of the purposes clause would appear to have a technical and legal meaning as the objects clause of a charter appears to have. Riche v. Ashbury Rwy. Carriage and Iron Co., L. R. 9 Ex 224, 225, 254, 256, 271 (1874); Beatty v. Knowler, 29 US 151, 167 (1830), and Howard L. Oleck, Non-Profit Corporations and Associations, Prentice-Hall, Englewood Cliffs, N.J., 3rd Ed., (1974), p. 206 and Chapters 8 and 9.

A formal instrument delegating authority is ordinarily subject to a strict interpretation, and the authority is not extended beyond that which is given in terms, or which is necessary to carry into effect that which is expressly given, 1 Am. & Eng. Encyclo. of Law 999.

The questions becomes what does the phrase "parks, parking areas, open spaces, streets, paths or as other facilities" mean? And taken in conjunction with the words "to operate and maintain." Appellants offer the definitions of Webster's New International Dictionary.

The word "operate" means to "act effectively or to perform some process of work" while the word "maintain" appears to mean "supply of necessaries and conveniences" or "to hold in a particular state", or "to keep possession of, not to surrender or relinquish."

The word "park" in Websters Unabridged 2d Ed. is defined as:

"2. A tract of ground kept in its natural state about or adjacent to a residence, as for the preservation of game, for walking, riding or the like."

And the 3rd Ed. of Unabridged Webster's defines "park" as:

"3. A large area often of forested land reserved from settlement and maintained in its natural state for public use (as by campers, hunters), or as a wildlife refuge."

It is not apparent that the words "parking areas" or "open spaces, streets, paths" admit of any such flexible construction as to include horse barns, swimming pools, or community centers. The general words "or other facilities" would appear to take their meaning from the prior specific words as an elementary rule of meaning of a contract. But since the language is ambiguous it appears that rules of construction must be employed.

In Rhone v. Loomis, 74 Minn. 200, 77 NW 31 (1898) the conclusions of both the majority and dissenting opinions were reached by applying the ejusdem generis canon of construction, the disagreement being as to what the factor common as to the enumerated things was. The doctrine of ejusdem generis, or what is commonly called "Lord Tenterdon's Rule" generally stated is that where a document or statute specifically enumerates several classes of persons or things, and immediately following, and classed under such enumeration, the clause embraces "other" person or things, the word "other" will generally be read "other such like" so that persons or things therein comprised may be read ejusdem generis with and not of a quality superior or different from, those specifically enumerated.

To modify a contract is to make a new one, in effect, see Russell Motor Car Co. v. United States, 261 US 514, 43 S. Ct. 428, 67 L. Ed. 778.

Thus it is the position of appellants that the Reston Homeowners Association is continually

modifying this contract without the consent of appellants which is unconstitutional under Article 1, Section 10 of the Constitution of the United States. The latest interpretation placed upon this contract by the said Association is that appellants can be assessed for the operation of the Reston Internal Bus System.

Accordingly, appellants contend that the very basis of the contract of membership in the Reston Homeowners Association -- whether consolidated or constituent -- is that its funds shall be used only for the objects set forth in the purposes clause, and that any diversion therefrom is improper and may be enjoined by any member, see Robert S. Stevens, Handbook of the Law of Private Corporations, West Publishing Co., St. Paul, Minn., 1949, page 315.

It is the position of appellants that these matters are related to ultra vires matters which appellants may raise and did raise under Title 13.1-206 of the Code of Virginia and that they are at least a partial defense to the $60 assessment in this case see Abood et al v. Detroid Board of Education, 45 US Law Week, 4473, May 23, 1977.

C. THE TRIBUNALS OF VIRGINIA FAILED TO ACCORD APPELLANTS THEIR CONSTITUTIONAL RIGHTS UNDER THE FIRST, FIFTH, SEVENTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES

The trial courts and the Supreme Court of Virginia have failed to give appellants detailed, reasoned and informative decisions which disclose the reasoning which led the tribunal to the announced

conclusion which should be viewed as minimum standards of public information. The results of this lack of information are serious. It leads to situations where those subject to the courts jurisdiction are unable to ascertain the rules to which their conduct must conform. It leads, also, to situations where even their counsel are unable to fulfill their functions effectively. Moreover, a ruling made upon grounds and for reasons clearly untenable constitutes abuse of discretion. See particularly, Frank R. Cooper, State Administrative Law (A Research Project of the American Bar Foundation and the University of Michigan Law School) the Bobbs-Merrill Co., 1965, Vol. 1, page 162.

Since a well reasoned decision is not available in this case, appellants must postulate what the courts had in mind. In the transcript, pages 41 and 42, it appears that the Judge in Fairfax Circuit Court decided the case upon principles of res judicata and collateral estoppel principles. If so, appellants contend that the decision involves reversible error. In Steinman v. Clinchfield Coal Co., 121 Va 611, 93 SE 684 (1917) the Virginia Supreme Court held that the parties and issues and facts must be the same in a tribunal having subject matter jurisdiction for res judicata and collateral estoppel to apply, and this appears consistent with the holding of the United States Supreme Court in Cromwell v. County of Sac, 94 US 351, 24 L. Ed. 195 (1876).

Since the parties and issues before a court with subject matter jurisdiction are not the same herein as compared to the case of Ridgill v. State Corporation Commission, Case No. 71-1135 as reported at 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813 (1972), res judicata and collateral estoppel do

not apply as a matter of law. Thus the only apparent basis in the record for the learned disposition of this case by the tribunals of Virginia is in error as a matter of law which are questions of law for the Court.

On appellants plea and demand for proof of authorization by authorized parties to file, prosecute, compromise, and appeal this action of suit, the tribunals have erroneously decided the issue against appellants. This plea or demand places in issue the authority of the agent such as the corporation, and the authority of the subagents thereunder.

Under Title 13.1-35 and 13.1-45 of the Virginia Code and the comparable sections of Chapter 2 of Title 13.1, the authority of an officer or agent of a corporation is what the charter, the by-laws, or the resolutions of the Board of Directors and the stockholders or members grant such officer or agent in his employment contract.

A power of attorney is an instrument in writing, 3 Am. Jur. 2d, Agency, para. 23, which must be strictly construed, 3 Am. Jur. 2d Agency, para. 29. And an agent or subagent has the duty to disclose, 3 Am. Jur. 2d, Agency, para. 200, and he must make a prompt, full and frank disclosure and account of all matters concerning the agency, and it is his duty to obey instructions, 3 Am. Jur. 2d, Agency, para. 206, and a violation of the instructions cannot be excused by custom or usage, 3 Am. Jur. 2d, Agency, para. 207.

In the case at bar, two officers of the court, i.e., Messrs. Perce and Kenny, appeared against appellant in favor of other parties while at the same time owing a fiduciary duty to appellants.

Attorneys at law and agents of corporations

are distinguished from general agents because their authority is special and limited in character, 3 Am. Jur. 2d, Agency, para. 3. No such writing appears in this case concerning the authority of subagents Perce, Burgess, and Kenny.

Since all acts of an agent outside the scope of his authority is void, Commission of Fisheries, v. Hampton Roads, O. P. & P. Assn. 109 Va 565, 64 SE 1049 (1909) the failure of these agents to prove up their authority is reversible error appellants contend.

Where the authority is created by power of attorney or other instrument in writing, the writing itself must be produced, and since the construction of writings belongs to the court and not to the jury, the fact and scope of the agency are questions of law for the court, 1 Am. & Eng. Encyclo. Law 998.

Here the fiduciaries Perce and Kenny, who were officers of the court, failed to produce the writing which they alleged gave fiduciary Burgess the authority to sue, i.e., the by-laws of Reston Homeowners Association. The only written evidence in the record showing or tending to show any authority is plaintiff-appellee exhibit no. 3, included as appendix E herein. It merely establishes that certain procedures for collection had been approved by the Board of Directors without showing that anyone was clothed with the authority to institute, compromise, or prosecute this action or suit. It is the position of appellants that this is reversible error and denial of Constitutional rights to them by the tribunals of Virginia.

In the Fairfax County General District Court and in the Fairfax Circuit Court, appellants raised equitable defenses barring the $60 assessment in whole or in part, and raised the issue of

Constitutionality of the removal, jurisdiction, and appeal statutes of the Fairfax County General District Court which code sections are Title 16.1-92; 16.1-77, and 16.1-106, respectively under the Seventh Amendment of the Constitution of the United States. The Seventh Amendment provides that in actions at common law the right of trial by jury shall be preserved, in matters over the value of $20. The appeal statute -- 16.1-106 -- provides that no appeal shall be taken from the Fairfax County General District Court unless the value is for over $50, and the judge stated that he must rule for more than $50. Appellants allege that this is unconstitutional under the Seventh Amendment of the Constitution of the United States, they having raised federally protected rights in the very first pleading they filed in this case. In support of this proposition the appellants rely on Dice v. Akron C. & Y. R. Co., 342 US 359 (1952).

Under Title 16.1-93 of the Virginia Code every action or other proceeding in a court not of record shall be tried in accordance with the principles of law and equity, and when the same shall conflict with the principles of equity, equity shall prevail.

Subagents Perce, Burgess, and Kenny had the burden of proof, see Jernigan v. Capps, 187 Va 73, 78. And they had the duty of complete disclosure and this is not an action involving a third party but a direct challenge to the authority of agents and subagents which they were bound to prove up by authority emanating from the defendants or from the Board of Directors since the directors did not appear in person. The testimony of an agent is not entitled to probative weight in the absence of written or oral evidence directly from the principle, Fisher v.

White, 94 Va 236, 242 (1897) wherein the Supreme Court of Virginia held:

"Neither are the admissions or statements of an alleged agent that he was the agent of another evidence if that agency but the fact must be proved by other evidence."

On principle, it is not apparent that the testimony of an agent that another agent has authority from a third party principal is any evidence of agency either. The other evidence must be some act of the principal. The appellants have not authorized the subagents. The next question is 'Does the approval of existing collection procedures" authorize anyone to file affidavits, appear as a witness, or otherwise institute, prosecute or compromise an action or suit?" On this issue it is the position of appellants that the burden of proof by plaintiff has not been met nor has the statutory standard of equity shall control been met.

A further example of lack of equity controlling is involved in the fact that witness Perce, an officer of Reston Homeowners Association, having a fiduciary duty to appellants which is equitable since witness Perce is secretary of said Association. Under oath in this proceeding, witness Perce said he was an employee of Gulf Reston, Inc. which member of said association appoints by its vote practically alone all of the Board of Directors of Reston Homeowners Association. Thus it is the position of appellants that from the standpoint of equity, Perce, with respect to appellants is serving two masters and is the first fiduciary in history who has served two masters, see Williams v. Bolling, 138 Va 244, 121 SE 270, 273 (1924).

Additional matters pertaining to a striking disregard of equitable matters which is present in this case is that the Supreme Court of Virginia has held that the fiduciary capacity of a corporate fiduciary does not survive a consolidation, see Hofheimer v. Seaboard Citizens National Bank of Norfolk, 154 Va 392, 153 SE 656, cert. den. 283 US 855. 51 S. Ct. 648. 75 L. Ed. 1462 (1930) which appears to be the position of the federal courts with respect to Virginia law.

Still another improper equitable feature concerning this consolidation and hence the agency substitution contrary to the terms of the deeds is that appellants are required to pay into funds used for operation and maintenance of Lake Anne and the Lake Anne Center which are located on tracts of land north of Dulles Highway which tracts are separated from Reston Sections Two and Four by several highway rights of way such as the federal highway right of way and two separate Virginia Highway rights of way -- one on either side of the federal highway right of way for Dulles Highway. Thus the Lake Anne Center and Lake Anne do not appear to touch and concern the value of the land of the lot itself of Lot 204, Section Four, Reston.

In addition to the territorial impairment of the aforesaid deeds, a different fiduciary is substituted in further impairment. For example, the Board of Directors of Reston Homeowners Association and the majority vote within the corporation are different from that of Reston Second Homeowners Association and has a different set of fiduciary duties from those of the parties to the covenants of Reston Sections Two and Four. This is further evidence of failure to abide by equitable principles in this case

which appellants contend is improper under Article 1, Section 10 of the Constitution of the United States and the Fifth and Fourteenth Amendments thereto as well.

CONCLUSION

Therefore in consideration of the foregoing, this Court should grant an appeal from the Supreme Court of Virginia, and declare in violation of the Seventh, First, Fifth and Fourteenth Amendments to the United States Constitution the action of the Virginia tribunals in the case vis-a-vis the deed to appellants lot, and that the matters as explained herein constitute a violation of Article 1, Section 10 of the Constitution of the United States with respect to the contract matters at issue in this case, and reverse or remand the final judgment of the Supreme Court of Virginia.

Respectfully submitted

James L. Ridgill, Jr.

CERTIFICATE

The undersigned certifies that he is a member of the Bar of the Supreme Court of the United States and that three copies of this Jurisdictional Statement was sent by first class mail postage prepaid on April 21, 1978 to each of the Clerk of the Supreme Court of Virginia whose address is the Supreme Court Building, Richmond, Virginia, and to the Honorable Marshall Coleman, Attorney General of Virginia whose address is the Supreme Court Building, Richmond, Virginia, and to Reston

Homeowners Association, c/o Thomas S. Kenny whose address is 11800 Sunrise Valley Drive, Reston, Virginia 22091. All the parties required to be served have been served.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RESTON HOMEOWNERS ASSOCIATION	)	
Plaintiff	)	
vs	)	At Law No.
JAMES L. RIDGILL ET AL.	)	34,141
Defendants	)	

JUDGMENT ORDER

On the 19th day of October, 1974, came the Plaintiff, RESTON HOMEOWNERS ASSOCIATION, by its duly authorized representative and by counsel; the defendant, JAMES L. RIDGILL, JR., in person and by counsel; and the defendant, JANIE E. RIDGILL by counsel, on the issues joined, for trial by the Court without a jury.

There being no preliminary motions by either party, the Plaintiff presented its evidence to the Court and rested its case. Whereupon the Defendants moved to dismiss the action on the grounds that Plaintiff was not a proper party to bring the action, that the proper form of action should have been a bill to foreclose the lien, and that Plaintiff was not authorized to make capital improvement expenditures. This motion was argued by counsel, and was denied.

Whereupon the defendants presented their evidence to the Court and rested.

Whereupon the Defendant moved to dismiss the action on the grounds that institution of this action had not been properly authorized by the Board of Directors of the Plaintiff, and this was argued

by counsel and denied.

Upon consideration of the evidence of the parties and the argument of counsel, it appearing to the Court that judgment should be granted in favor of Plaintiff on its Motion for Judgment, and in favor of Plaintiff on Defendant's Counter-claim, it is

ORDERED AND ADJUDGED that judgment be and it hereby is entered in favor of Plaintiff against the Defendants, JAMES L. RIDGILL, JR., and JANIE E. RIDGILL, in the amount of $60.00, with interest thereon at the rate of 8% per annum from March 31, 1974, plus the Plaintiff's cost in this proceeding in the amount of $0.00.

IT IS FURTHER ORDERED that a transcript of these proceedings be incorporated as part of the record herein.

IT IS FURTHER ORDERED that the Clerk of the Court issue certified copies of this Order to counsel forthwith.

ENTER: November 22, 1976.

s/ James C. Cacheris,
Judge

SEEN:
HORWATT, KENNY, GLENNON
GOODMAN AND SCHULTZ
11800 Sunrise Valley Drive
Reston, Virginia 22091

By: s/ Thomas S. Kenny
Counsel for Plaintiff

SEEN AND ACCEPTED:
s/ John Douglas Smith
3609 Embassy Drive
Fairfax, Virginia 22030
Counsel for Defendants

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON THURSDAY THE 29TH DAY OF SEPTEMBER, 1977.

The petition of James L. Ridgill and Janie E. Ridgill for a writ of error to a judgment rendered by the Circuit Court of Fairfax County on the 22nd day of November, 1976, in a certain proceeding then therein depending, wherein Reston Homeowners Association was Plaintiff and the petitioners were defendants, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of the opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said circuit court.

A Copy

Record No. 770371

Teste:
Howard G. Turner,
Clerk

By: s/ Allen L. Lucy,
Deputy Clerk

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY THE 23rd DAY OF NOVEMBER, 1977.

James L. Ridgill, et al, Plaintiffs in Error

against Record No. 770371

Reston Homeowners Association, Defendants in Error

Upon a Petition for Rehearing

On mature consideration of the petition of the plaintiffs in error to set aside the judgment rendered herein on the 29th Day of September, 1977, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:
s/ Allen L. Lucy
Clerk

BOOK 3201, page 626

21954

August 22, 1969 - et to: Simmons, Coleburn, Towner & Carman

THIS DEED, Made this 24th day of July, 1969, by and between MAURY L., INC., a Delaware Corporation, party of the first part, and JAMES L. RIDGILL and JANIE E. RIDGILL, his wife, parties of the second part.

WITNESSETH: That for and in consideration of the sum of Five Dollars ($5.00), receipt whereof is acknowledged, the party of the first part does hereby grant, bargain, sell and convey unto the parties of the second part, as tenants by the entirety, with the full common law right of survivorship, it being intended that the part of the one dying first shall then belong to the survivor, with general warranty of title, all that certain lot or parcel of land, together with the improvements thereon, located in Fairfax County, Virginia, more particularly described as:

All of Lot 204, Section 4, RESTON, as shown on a plat attached to a deed of Vacation and Rededication recorded among the land records of said County in Deed Book 3033, at page 502, as corrected and re-recorded in Deed Book 3162, at page 686, among the land records of said County, being a re-subdivision of Parcels 1 and 3, Section 4, and Parcel 3-B, Section 2, RESTON, as originally dedicated, platted,

and recorded among the land records of said County in Deed Book 2630, at page 465.

And being part of the same property conveyed to the party of the first part by Deed recorded among the land records of said County in Deed Book 3082, page 465.

Together with a membership in the Reston Second Homeowners Association, which Corporation shall be charged with the duty of enforcing the protective covenants and restrictions contained in the Deed of Dedication recorded as aforesaid, as agent of the grantee herein and other lot owners in said subdivision, and which membership shall run with the land and automatically pass to subsequent owners of the lot herein conveyed whether referred to specifically or not.

The parties of the second part by accepting this conveyance, covenant and agree to abide by the protective covenants, restrictions and charges contained in the Deed of Dedication of Reston, Section 2, recorded in Deed Book 2499, at page 339, amended in Deed Book 2761, at page 415, and incorporated by reference in the Deed of Dedication of Reston, Section 4, as recorded in Deed Book 2630, at page 84, and in the Deed of Rededication recorded in Deed Book 3033, at page 502, and on the plats recorded with said Deeds of Dedication; take subject to said charges and liens for unpaid charges and agree that in any conveyance of the above described property, they will require the grantees to covenant to abide by such protective covenants, restrictions and charges.

This conveyance is made subject to conditions, restrictions, reservations, rights of way and

easements contained in the Deeds forming the chain of title to this property,

The party of the first part covenants that it has the right to convey said land; that it has done no act to encumber the same; that the parties of the second part shall have quiet possession thereof free from all encumbrances; and that the party of the first part will execute such further assurance of said land as may be requisite.

IN WITNESS WHEREOF, MAURY L., INC., has caused this Deed to be executed by its President, and its seal affixed and attested by its Secretary pursuant to due authority granted by said Corporation.

L.S. MAURY L., INC.

By s/ Maurice Lipnick
President

ATESTE: s/ Marilyn C. Lipnick
Secretary

STATE OF VIRGINIA AT LARGE) To-Wit:

I, ERNEST W. PROCTOR, a Notary Public in and for the State of Virginia at Large, whose commission expires February 1, 1970, do hereby certify the MAURICE LIPNICK, President of MAURY L., INC., whose name is assigned to the foregoing and attached Deed, dated July 24, 1969, has acknowledged the same before me in my State as aforesaid as the act and deed of said Corporation and made oath before me that the said Deed is signed and acknowledged by due authority.

GIVEN under my hand this 25th day of July, 1969.

s/ Ernest W. Proctor
Notary Public

State Tax $63.00
County Tax $31.00
Tax $42.00

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia July 31, 1969 at 10:00 AM. This instrument was received and, with the certificate annexed, admitted to record.
TESTE:
s/ W. Franklin Gooding
Clerk

BOOD 2761, page 415

12582

May 20, 1966 - Ret to: Bauknight, Prichard, McCandlish and Williams, Attys.

THIS AMENDMENT TO DEED OF DEDICATION, made and entered into this 15th day of April, 1964, by RESTON, VA., INC., (formerly Palindrome Corporation), a New York Corporation, hereinafter sometimes referred to as "Reston", party of the first part, and RESTON SECOND HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation, hereinafter sometimes referred to as the "Association", party of the second part;

WHEREAS, by Deed of Dedication dated August 27, 1964, in Deed Book 2499 at page 339 among the land records of Fairfax County, Virginia, Reston subdivided a portion of its land more particularly described therein into lots and streets and open spaces, and designated and dedicated the same as RESTON, SECTION TWO: AND WHEREAS, by joining in said Deed of Dedication, the Association accepted the responsibilities and duties imposed upon it by the protective covenants and restrictions set forth therein and to which the entire area shown on the plat attached ----------

IN THE COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT OF FAIR FAX COUNTY, VA.

RESTON HOMEOWNERS ASSOCIATION, INC.)
Plaintiff)
vs)
JAMES L. AND JANIE E. RIDGILL)
Defendants)

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

It appears well settled law in Virginia that an agent may not vary the terms of a contract without the consent of the principal, see Neilson v. Bowman, 70 Va 732, 737-739 (1876). Thus it appears that the Deed to defendants lot as recorded in Deed Book 3201 at page 626 of the land records of Fairfax County, Virginia, may not be varied by anyone without defendants consent. By the terms of said deed, defendants appointed Reston Second Homeowners Association their agent for enforcement of the covenants listed in the deed, which covenants are those of Reston, Sections Two and Four, to which defendants are parties. Defendants contend that an agent may not substitute another agent without the consent of the principal, see Barber Agency v. Co-operative Barrel Co., 133 Minn 207, 158 NW 38 (1916) wherein the court said:

"---to permit ---an agent, to transfer his duties and powers to a corporation without the consent of the principal would involve a more radical violation of the rules governing the relation of

principal and agent than to permit a partnership, employed as an agent, to devolve its powers and duties upon one of its members. Barber could no more substitute plaintiff for himself as defendants agent, without defendants consent, than he could so substitute any other corporation or individual ---"

Accordingly, it appears Reston Second Homeowners Association cannot substitute another corporation as agents for defendants without defendants consent. The Board of Directors of another corporation would be elected by a different voting majority having different fiduciary duties toward defendants. Thus said Board would have different fiduciary duties towards defendants.

Different fiduciary duties would appear to be in conflict with those owed to defendant, and to the benefit of plaintiff, since it is of no benefit to defendants. When a fiduciary relationship is found to exist, any transaction such as the consolidation of Reston Second Homeowners Association into Reston Homeowners Association to the benefit of the dominant party is presumptively fraudulent, see Nicholson v. Shockey, 192 Va 270, 64 SE 2d 813 (1951). And no agent may perpetuate a fraud upon a principal in Virginia, See Bankers Fire Ins. Co. vs. Sands, 168 Va 545m k 92 SE 617, 621 (1937). In such matters even if true that defendants have suffered no injury, the law makes no such inquiry, see Williams v. Bolling, 138 Va 244, 121 SE 270 (1923).

Under Title 13.1, Section 245 (b) of the Code of Virginia, which appears to have applied to Reston Second Homeowners Association, the issuance of

the order of consolidation into Reston Homeowners Association terminated the existence of Reston Second Homeowners Association. The termination of an artificial being which is an agent terminates the agency, see Mechem on Agency, Callaghan and Co., Chicago, 1914, Vol. 1, para. 674, wherein the author states:

"Where, instead of a natural person, an artificial person is constituted the agent, as in the case of a corporation, the legal 'death' or dissolution of that artificial person, would ordinarily terminate the agency."

The case law in support of this proposition includes such cases as Larson v. Newman, 19 N.D. 153, 121 NW 202 (1909); Egner v. States Realty Co., 223 Minn 305, 26 NW 464 (1947).

Since the "being invisible, intangible, and existing only in contemplation of the law" which defendants designated as their agent for assessing, collecting, and disbursing, etc. no longer exists -- Reston Second Homeowners Association -- defendants contend that no party such as plaintiff, nor any successor plaintiff, may substitute another legal entity such as Reston Homeowners Association for defendants agent without defendants consent. And this would appear to be true for all parties to the covenants of Reston, Sections Two and Four, since the parties did not consent to any agency subsitution, see Fairfax Chancery Case No. 31,217 wherein the parties did not consent.

In Jernigan v. Capps, 187 Va 73, 78 (1948) the Supreme Court of Virginia said:

"---while courts of equity will enforce restrictive covenants where the intention of

the parties is clear and the restrictions are reasonable, they are not favored, and the burden is on him who would enforce such covenants to establish that the activity objected to is within their terms. They are to be most strictly construed against the grantor and persons seeking to enforce them, and substantial doubt or ambiguity is to be resolved in favor of free use of property and against restrictions.---"

Thus it appears that defendants are entitled to judgment as a matter of law because no fact matters are in issue.

Wherefore defendants pray for summary judgment, return of all funds paid to Reston Homeowners Association since April 22, 1970, interests, costs by defendants expended and reasonable attorneys fees.

Respectfully submitted,

s/ John Douglas Smith
Attorney for Defendants
3609 Embassy Lane
Fairfax, Virginia 22030

Date 10-19-76

Judge JCC

MINUTES OF
SPECIAL MEETING OF THE BOARD OF DIRECTORS
RESTON HOMEOWNERS ASSOCIATION

Held December 19, 1973

A special meeting of the Board of Directors of Reston Homeowners Association was held at 8:30 p.m. on December 19, 1973 in Lake Anne Hall, Reston, Virginia. Present were Messrs. Stenberg, Ewald, Magness, Steinbaues, Todd, Cox, and Saunders. Absent were Messrs. Morse and Burch. Also present was Thomas Burgess, Executive Director of the Association.

The minutes of the special meeting of July 25, 1973 were read and approved as corrected.

The Board next considered the proposed operating and capital budget for 1974. The President remarked that it represented two months work by the Association staff and the RHOA Council and recommended its adoption. The Executive Director noted that the document serves both as a financial control and an expression of the long and short term goals of the Association. Mr. Ewald, seconded by Mr. Cox, moved the adoption of the following resolution:

RESOLVED, that the 1974 budget of $920,530 be approved as presented ----
--------.

Mr. Ewald, seconded by Mr. Steinbauer, moved the adoption of the following resolution:

RESOLVED, that the annual charge called for by Article II, Paragraph 8 of the Deed of Dedication be fixed for the year 1974 at $60.00, or 1% of assessed valuation whichever is the lesser.

The Executive Director inquired if existing collection procedures were to stand. It was the sense of the Board that they were. The resolution was unanimously adopted.

---

s/ ROBERT PERCE
Secretary

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VA.

RESTON HOMEOWNERS ASSOCIATION	)	
Plaintiff	)	AT LAW
vs	)	34,141
JAMES L. AND JANIE E. RIDGILL	)	
Defendants	)	

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

COME NOW defendants in the above entitled and numbered cause and file this their notice of appeal and assignments of error pursuant to Rule 5:6 of the Rules of Practice of the Supreme Court of Virginia. And in support thereof state that the transcript has been filed in this case, and further set forth errors of the said Court as follows:

The Honorable Circuit Court of Fairfax County, Virginia in its final order, judgment and decree entered in the above entitled and numbered cause on November 22, 1976, signed by the Honorable James C. Cacheris erred:

1. In denying defendants motions for summary judgment and dismissal at trial on the agency question in that defendants have not appointed Reston Homeowners Association their agent and the denial of these motions is contrary to the law and evidence in this case.

2. In denying defendants motion to dismiss on grounds that Mr. Burgess failed to show that he was authorized to institute the action or suit as

agent within the terms of the deed to defendants lot which denial is contrary to the pleadings, the law, and the evidence in this case.

3. In rendering judgment against defendants for the $60 assessment in that the record shows that Reston Homeowners Association has levied against them for matters not within the terms of the contract as evinced in the deed to their lot as recorded in Deed Book 3201 at page 626 of the land records of Fairfax County, Virginia, the deed to the common lands as recorded in Deed Book 2761 beginning at page 415 of the land records of Fairfax County, Virginia, and the corporate franchise issued to Reston Homeowners Association -- consolidated or constituent.

4. In the affirmative covenants such as payment of a $60 annual assessment in this action at law are not enforceable in Virginia.

5. In that affirmative covenants such as the payment of the $60 assessment in this action at law are not enforceable as a personal liability in that defendants have no personal contract with Reston Homeowners Association -- consolidated or constituent.

6. The records of Reston Homeowners Association such as its charter, by-laws, minutes of its meetings -- whether Director's or Members'-- are not recorded within the chain of title of Lot 204, Section 4, Reston, recorded as aforesaid.

7. In that the enforcement of this $60 assessment is an unconstitutional variation of the deed to Lot 204, Section 4, Reston, recorded as aforesaid, under Article 1, Section 10 of the United States Constitution.

8. In that the jurisdictional and removal statutes under which the Fairfax County General District Court operates are unconstitutional under the Seventh Amendment of the Constitution of the United States.

9. In that Reston Homeowners Association is no more than a third party beneficiary and cannot enforce any contracts on defendants other than those set forth by defendants in the chain of Title of Lot 204, Section 4, Reston.

10. In that reasonable standards for ascertaining how said assessments are to be determined, apportioned, or spent are not set forth and are therefore void as being unconstitutional and indefinite.

11. In the Reston Homeowners Association is not a party to the covenants as set forth in the Deeds at issue in this case and the corporate franchise was issued subject to the said Deeds.

12. In that the factual and legal basis for the final order and the interlocutory orders entered in this case are not set forth in said orders thus failing to provide a rational and legal basis for said orders as appears mandated by the Constitution of the United States and which appears to amount to denial of equal protection and due process as well as abuse of discretion by the Court.

13. In denial of defendants motion for dismissal on grounds that the contract at issue does not provide a basis for assessment for capital improvements such as a community center.

Respectfully submitted,

s/ John Douglas Smith
Attorney for Plaintiffs
3609 Embassy Lane
Fairfax, Virginia 22030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing notice of appeal and assignments of error were sent on December 17, 1976, by first class mail postage prepaid to Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091.

s/ John Douglas Smith

FILED FEB 21, 1978

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

In re: Reston Homeowners Association	)	Record No. 770371
vs	)	
James L. and Janie E. Ridgill	)	

COME NOW the defendants in the above styled case and file this their notice of appeal to the Supreme Court of the United States under Rule 10 of the Rules of the Supreme Court of the United States, and that the said defendants are the parties taking this appeal.

This appeal is taken from the entry of order of the Supreme Court of Virginia in its Record No. 770371 entered September 29, 1977, and from the entry of order by the Supreme Court of Virginia in its Record No. 770371 entered petition for a rehearing thereon, which affirmed in effect the judgment of the Fairfax Circuit Court entered in its Case At Law No. 34,141 under date of November 26, 1976.

This appeal is taken under Title 28, United States Code, Section 1257 (2) and Title 28 United States Code, Sections 2103 and 2104 and under Parts IV and V of the Rules of the Supreme Court of the United States.

s/ James L. Ridgill, Jr. 2/20/78
s/ Janie E. Ridgill

CERTIFICATE OF
SERVICE

I certify that I am a member of the Bar of the Supreme Court of the United States and that a copy of the foregoing notice of appeal was sent by first class mail postage prepaid on February 20, 1978, to each of the following which are the parties required to be served and all of them to the best of my knowledge and belief:

1. Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091
2. Clerk, Supreme Court of Virginia, Supreme Court Building, Richmond, Virginia
3. The Honorable Mr. Coleman, Attorney General of Virginia, Supreme Court Building, Richmond, Virginia
4. The Honorable John Dalton, Governor of Virginia, the Capitol Building, Richmond, Virginia.

s/ James Lee Ridgill, Jr.
2/20/78